



DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[FNS-2021-0012]

RIN 0584-AE87

Supplemental Nutrition Assistance Program: Rescission of Requirements for Able-Bodied Adults Without Dependents: Notice of Vacatur

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule removes from the Code of Federal Regulations the final rule published on December 5, 2019, titled “Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents.” This action responds to a decision of the U.S. District Court for the District of Columbia that vacated the rule.

DATES: The action is effective [insert date of publication in the Federal Register]. However, the court order had legal effect immediately upon its filing on October 18, 2020.

ADDRESSES: SNAP Program Development Division, Food and Nutrition Service, USDA, 1320 Braddock Place, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Arpan Dasgupta, Certification Policy Branch, Program Development Division, Food and Nutrition Service, 703-305-1623, SNAPCPBrules@usda.gov.

SUPPLEMENTARY INFORMATION: On December 5, 2019, the Food and Nutrition Service (FNS) published a final rule titled “Supplemental Nutrition

Assistance Program: Requirements for Able-Bodied Adults Without Dependents” (84 FR 66782) (hereinafter “2019 Final Rule”). The 2019 Final Rule revised conditions under which USDA would waive, when requested by States, the able-bodied adult without dependents (ABAWD) time limit in areas that have an unemployment rate of over 10 percent or a lack of sufficient jobs. In addition, the 2019 Final Rule limited carryover of ABAWD discretionary exemptions.

In the October 18, 2020, decision in *District of Columbia, et al., v. United States Department of Agriculture, et al.*, No. 20-cv-00119-BAH (D.D.C. 2020), the U.S. District Court for the District of Columbia vacated the 2019 Final Rule.

This rule is being promulgated to revert the language of the regulations amended by the 2019 Final Rule to that which existed prior to the 2019 Final Rule. This rule is not subject to the requirement to provide notice and an opportunity for public comments because it falls under the good cause exception at 5 U.S.C. 553(b)(B). The good cause exception is satisfied when notice and comment is “impracticable, unnecessary, or contrary to the public interest.” *Id.* The 2019 Final Rule has already been vacated by a court of law. This rule is simply an administrative step that reverts the language of the relevant regulations to reflect the court’s order vacating the 2019 Final Rule. Additionally, because this rule implements a court order already in effect, FNS has good cause to waive the 30-day effective date under 5 U.S.C. 553(d).

List of Subjects in 7 CFR Part 273

Able-bodied adults without dependents, Administrative practice and procedures, Employment, Indian Reservations, Time limit, U.S. Territories, Waivers, Work Requirements.

Accordingly 7 CFR part 273 is amended as follows:

PART 273— CERTIFICATION OF ELIGIBLE HOUSEHOLDS

- 1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2036.

- 2. In § 273.24, revise paragraphs (f) and (h) to read as follows:

§ 273.24 Time limit for able-bodied adults.

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(f) *Waivers*—(1) *General*. On the request of a State agency, FNS may waive the time limit for a group of individuals in the State if we determine that the area in which the individuals reside:

(i) Has an unemployment rate of over 10 percent; or

(ii) Does not have a sufficient number of jobs to provide employment for the individuals.

(2) *Required data*. The State agency may submit whatever data it deems appropriate to support its request. However, to support waiver requests based on unemployment rates or labor force data, States must submit data that relies on standard Bureau of Labor Statistics (BLS) data or methods. A non-exhaustive list of the kinds of data a State agency may submit follows:

(i) To support a claim of unemployment over 10 percent, a State agency may submit evidence that an area has a recent 12 month average unemployment rate over 10 percent; a recent three month average unemployment rate over 10 percent; or an historical seasonal unemployment rate over 10 percent; or

(ii) To support a claim of lack of sufficient jobs, a State may submit evidence that an area: is designated as a Labor Surplus Area (LSA) by the Department of Labor's Employment and Training Administration (ETA); is determined by the Department of Labor's Unemployment Insurance Service as qualifying for extended unemployment benefits; has a low and declining employment-to-population ratio; has a lack of jobs in declining occupations or industries; is described in an academic

study or other publications as an area where there are lack of jobs; has a 24- month average unemployment rate 20 percent above the national average for the same 24-month period. This 24-month period may not be any earlier than the same 24-month period the ETA uses to designate LSAs for the current fiscal year.

(3) *Waivers that are readily approvable.* FNS will approve State agency waivers where FNS confirms:

(i) Data from the BLS or the BLS cooperating agency that shows an area has a most recent 12 month average unemployment rate over 10 percent;

(ii) Evidence that the area has been designated a Labor Surplus Area by the ETA for the current fiscal year; or

(iii) Data from the BLS or the BLS cooperating agency that an area has a 24 month average unemployment rate that exceeds the national average by 20 percent for any 24-month period no earlier than the same period the ETA uses to designate LSAs for the current fiscal year.

(4) *Effective date of certain waivers.* In areas for which the State certifies that data from the BLS or the BLS cooperating agency show a most recent 12 month average unemployment rate over 10 percent; or the area has been designated as a Labor Surplus Area by the Department of Labor's Employment and Training Administration for the current fiscal year, the State may begin to operate the waiver at the time the waiver request is submitted. FNS will contact the State if the waiver must be modified.

(5) *Duration of waiver.* In general, waivers will be approved for one year. The duration of a waiver should bear some relationship to the documentation provided in support of the waiver request. FNS will consider approving waivers for up to one year based on documentation covering a shorter period, but the State agency must show that the basis for the waiver is not a seasonal or short term aberration. We

reserve the right to approve waivers for a shorter period at the State agency's request or if the data is insufficient. We reserve the right to approve a waiver for a longer period if the reasons are compelling.

(6) *Areas covered by waivers.* States may define areas to be covered by waivers. We encourage State agencies to submit data and analyses that correspond to the defined area. If corresponding data does not exist, State agencies should submit data that corresponds as closely to the area as possible.

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(h) *Adjustments.* FNS will make adjustments as follows:

(1) *Caseload adjustments.* FNS will adjust the number of exemptions estimated for a State agency under paragraph (g)(2) of this section during a fiscal year if the number of SNAP recipients in the State varies from the State's caseload by more than 10 percent, as estimated by FNS.

(2) *Exemption adjustments.* During each fiscal year, FNS will adjust the number of exemptions allocated to a State agency based on the number of exemptions in effect in the State for the preceding fiscal year.

(i) If the State agency does not use all of its exemptions by the end of the fiscal year, FNS will increase the estimated number of exemptions allocated to the State agency for the subsequent fiscal year by the remaining balance.

(ii) If the State agency exceeds its exemptions by the end of the fiscal year, FNS will reduce the estimated number of exemptions allocated to the State agency for the subsequent fiscal year by the corresponding number.

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Cynthia Long
Acting Administrator
Food and Nutrition Service

